IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2224 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHIRU @ BHANABHAI MATHURBHAI BALDANIYA (AHIR)
Versus
COMMISSIONER OF POLICE OF THE CITY OF SURAT AND OTHERS

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Appearance :
MS BANNA S DUTTA for Petitioner.
MR LR PUJARI, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 10/05/2007

ORAL JUDGMENT

1) In this petition, the petitioner has challenged his detention order dated 15th December, 2006 passed by the Commissioner of Police, Surat City in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as “PASA”).

2. The detaining authority was of the opinion that the activities of the petitioner are prejudicial to the public order and his detention is, therefore, necessary. To form such an opinion the detaining authority took into account two criminal cases lodged against the petitioner alleging offences punishable under Sections 323, 324, 504, 506 (2) and 114 of the Indian Penal Code and an offence under Section 25 of the Arms Act. In addition to these cases, the detaining authority also considered the material collected by the investigating agency while investigating into these offences. It is alleged that on 19-11-2006, the petitioner had threatened and terrorized certain members of public along with his companion. Similarly, on 15-10-2006, the petitioner and his companion had threatened and assaulted some of the traders of the locality. On the basis of these allegations, the petitioner was placed under preventive detention.

3. Learned advocate Ms.Banna Dutta for the petitioner submitted that the order of detention is illegal. It was submitted that the opinion formed by the detaining authority is not sustainable in the eye of law. Except for two criminal cases involving the petitioner in offence punishable under Sections 323, 324, 504, 506 (2) and 114 of the Indian Penal Code and under Section 25 of the Arms Act, there is no further material on record. She submitted that it may be a case of disturbance of law and order situation. However, the activities of the petitioner cannot be branded as one giving rise to disturbance of public order.

4. In this regard reliance is placed on the decision of this Court in the case of **Ashokbhai Jivraj@Jivabhai Solanki v.Police Commissioner, Surat & ors. reported in 2000 (1) G.L.H. 393**. In the said decision Division Bench found that the detaining authority could not have

invoked the power of detaining the detenu. Forming the opinion, it was found that that the detenu was involved in as many as four cases of theft, despite which, the Division Bench was of the opinion that the cases against the detenu are already been registered. The case would fall under the maintenance of law and order and not public order. The Division Bench, therefore, opined that the subjective satisfaction arrived at by the detaining authority cannot be said to be legal and valid.

5. On the other hand learned AGP Shri Pujari opposed the petition.

6. Having heard the learned advocates appearing for the parties, I find that the ratio laid down by the Division Bench of this Court in the case of Ashokbhai Jivraj@Jivabhai Solanki v.Police Commissioner, Surat & ors. (supra) would apply. It would be at the best of question of law and order and not the question of public order looking to the nature of allegations made against the petitioner. The opinion of the authority, therefore, being unsustainable, the detention order is quashed.

7. I have no hesitation in declaring the detention illegal, since I find that the authorities have formed its opinion which cannot be sustained in the eye of law.

8. In the result, the petition is allowed. The order of detention dated 15.12.2006 passed by the Commissioner of Police, Surat City is quashed and set aside. Since the order of detention is quashed, the detenu is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[AKIL KURESHI, J.]

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